

## REMARKS

### I. Status of the Application

Claims 1-32 are presently pending. Claims 1-14, 19-32 stand rejected under 35 U.S.C. § 103(a) as being obvious over Howorth US 3,602,213 in view of van der Waaji US 3,893,457. Claims 15-18 stand rejected under 35 U.S.C. § 103(a) as being obvious over Howorth US 3,602,213 in view of van der Waaji US 3,893,457 and further in view of Wiedner US 5,860,420. The claims have been amended to recite an enclosed space with an air outlet opening and an air inlet means within the enclosed space. Claim 2 has been cancelled. Support for the amendment is found in claim 2.

### II. Claims 1-14 and 19-32 Are Patentable over Howorth and van der Waaji

Claims 1-14 and 19-32 stand rejected as being obvious in view of the Examiner's combination of Howorth US 3,602,212 and van der Waaji US 3,893,457. Applicant respectfully traverses the rejection based on the amended claims now presented.

Claim 1 is directed to an operation unit having an enclosed space formed from at least two side walls, a roof element, a back wall and a wall. Within the enclosed space is an air outlet opening and an air inlet means. The air inlet means is provided *for retracting air from within said enclosed space* to said air flow unit. The Examiner acknowledges that Howorth fails to teach this feature of the claims. This is in fact correct because Howorth teaches to do *just the opposite*, namely to obtain air from *outside the operating unit*. This is clearly shown in all of the figures where the air flow unit, air inlet and air outlet are all positioned above and exterior to the operating unit. See Figures 1 and 3 of Howorth below.

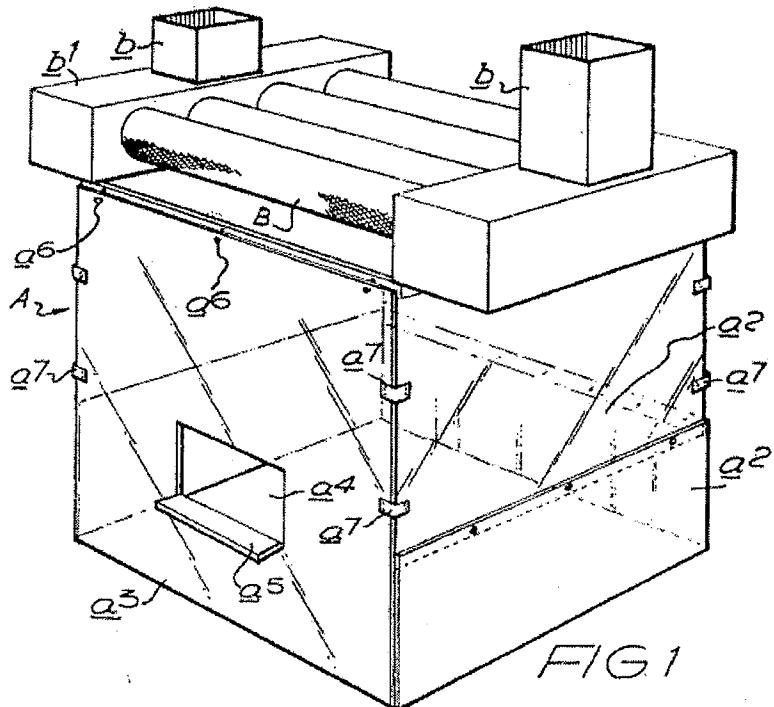


FIG. 1

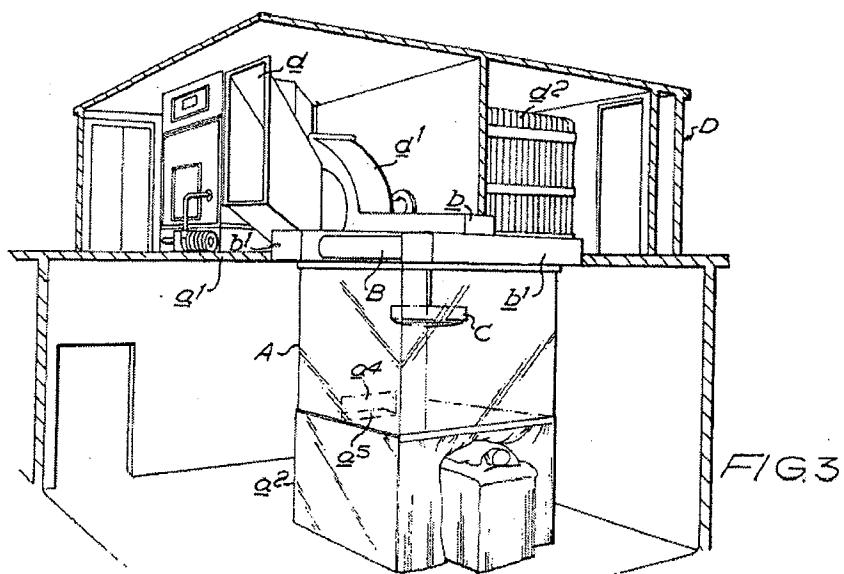


FIG. 3

In the present office action, the Examiner says that Howorth teaches the roof element, referring to a1 in Figure 3. However, a1 seems to be a cross-section of the ceiling with no indication of where the ceiling extends. It is clear from Figure 1 that the air flow unit is positioned above the operation unit and directs air flow through the top of the operation unit, which is clearly open. If there was a roof, as the Examiner implies from a1, it would be impossible for the air flow unit to direct air flow into the operation unit. There is no roof on the operation unit of Howorth, and none can be implied from Figure 3, as that figure clearly shows a ceiling that may surround the operation unit and the air flow unit, but certainly not covering the operation unit. A roof would defeat the purpose of Howorth.

Further, the Examiner has identified no citation from Howorth to support the Examiner's structural allegation that the air inlet and air outlet are within the space defined by the roof and walls. In stark contrast, Howorth's air flow unit, air inlet and air outlet are all unmistakably shown in each figure as being above and outside of the operation unit defined by Howorth's walls.

The Examiner further admits that Howorth fails to teach the claimed feature of a foldable roof element (claim 4) and wheels attached to the operation unit (claim 13).

Claim 9 depends from claim 1 and recites that the outflow direction of said outflow opening is directed downward in a direction away from said wall. Howorth fails to disclose that outflow is directed away from the wall. Howorth discloses that the outflow of tubes B is directed downward parallel to the walls and, at least partially, radially outward from the tubes B towards the wall.

Claim 10, which also depends from claim 1, recites that the air inlet opening is situated lower than said outflow opening. In contrast, Howorth discloses that intake openings D and b are located above outflow tubes B.

Recognizing that Howorth does not teach all of the claim limitations, the Examiner looks to van der Waaji for the features missing from Howorth. The Examiner believes that van der Waaji teaches the air inlet retracting air from within the operation unit, which the Examiner defines as the area defined by the cabinet 1 and the curtain 15 and the operating table 11. See Figure 1 below.

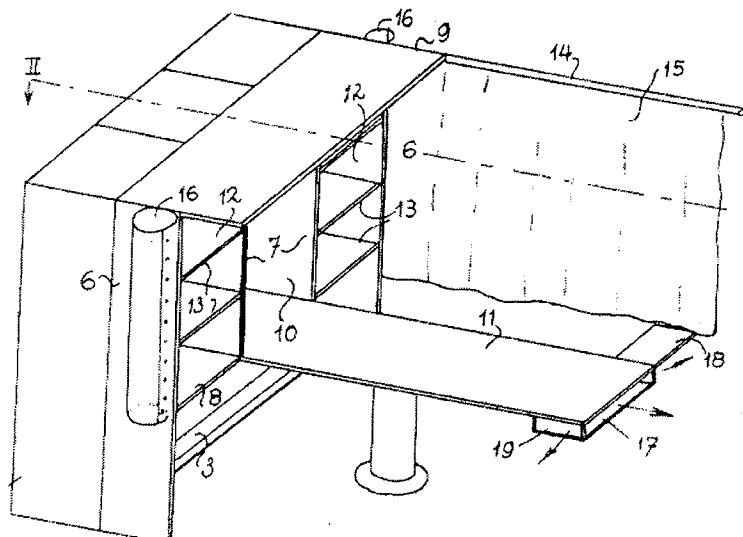


Fig. 1

However, the claims have been amended to clearly call out an enclosed space formed from at least two side walls, a roof element, a back wall and a wall. Within the enclosed space of the claims is an air outlet opening and an air inlet means. The air inlet means is provided *for retracting air from within said enclosed space* to said air flow unit. Van der Waaji, describing an open air unit, *teaches the opposite of an enclosed space* and therefore fails to teach an

enclosed space within which is an air inlet means for retracting air from within the enclosed space. The Examiner's combination of Howorth and van der Waaji clearly fail to teach or suggest this subject matter.

In addition, van der Waaji does not teach a roof element (14) as argued by the Examiner at page 4. Clearly, element 14 is a guide for the curtain 15 (see col. 2 lines 46-48). It is a curtain rod and not a roof. If the Examiner maintains that element 14 is a roof, the Examiner is respectfully requested to identify the roof structure, or provided a reasoned basis of why one of skill in the art would understand the curtain rod is a roof. Since the Examiner's combination of references fails to teach or suggest all of the claim limitations, the Examiner has not established a *prima facie* case of obviousness, and the rejection should be withdrawn.

Furthermore, Applicant respectfully disagrees with the Examiner's basis for combining Howorth and van der Waaji, namely, one of skill would have enclosed an operating space to provide a germ free environment. The Examiner has not provided the articulated reasoning supported by rational underpinnings considering the cited art as a whole required by *KSR*. Clearly, van der Waaji teaches an open air unit (the opposite of an enclosed area), leaving one of skill with no basis from van der Waaji to modify to an enclosed unit. Clearly the air inlet of van der Waaji is not within an enclosed space, and neither is the air inlet of Howorth. Howorth teaches drawing air from outside of the enclosed space. These features are completely lacking in either cited reference and so the Examiner's combination fails to create a *prima facie* case of obviousness. Even if van der Waaji did teach an air inlet retracting air from within an enclosed space (which it clearly does not), in order to modify Howorth with this teaching, one of skill would have to orient the extensive duct work and air flow unit in the top floor of Figure 3 somehow into the operation unit. Clearly, the structure of Howorth is so large and cumbersome

as to provide a teaching against its being somehow reoriented or included into the operating element.

### **III. Claims 15-18 Are Patentable over Howorth, van der Waaji, and Wiedner**

Claims 15-18 stand rejected as being obvious in view of the Examiner's combination of Howorth US 3,602,212, van der Waaji US 3,893,457 and Wiedner US 5,860,420. Applicant respectfully traverses this rejection.

The claims have been amended to require an enclosed area of an operation unit having an air outlet and an air inlet within the enclosed area, and drawing air from within the enclosed area in addition to moving a part of the body of said person on which surgery is to be performed through an opening under a cover, especially a cloth, an opening being provided in said cloth disclosing an operation area, a flow of substantially sterile air being guided over said cover and at least said operating area. As discussed above, the Examiner's combination of Howorth and van der Waaji fail to teach an enclosed area of an operation unit having an air outlet and an air inlet within the enclosed area and drawing air from within the enclosed area. Wiedner fails to cure this deficiency.

In addition, the Examiner admits that Howorth fails to disclose an opening in a cloth disclosing an operation area. Additionally, Howorth fails to disclose a flow of substantially sterile air being guided over said cover and at least said operating area. At most, Howorth discloses a uniform flow of air downward from the ceiling. Howorth's flow of air is not specifically guided over a cover and the opening in the cover disclosing an operating area. Van der Waaji, which teaches uniform flow of air across the entire operating unit, likewise does not

teach flow of air specifically guided over a cover and the opening in the cover disclosing an operating area. Wiedner fails to cure these deficiencies of Howorth and van der Waaji.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 15-18 as being obvious over Howorth, van der Waaji and Wiedner.

**IV. Conclusion**

Having addressed all outstanding issues, Applicant respectfully requests reconsideration and allowance of the case. To the extent the Examiner believes that it would facilitate allowance of the case, the Examiner is requested to telephone the undersigned at the number below.

Respectfully submitted,

Dated: October 27, 2009

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